

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**THE INDIAN HEALTH SERVICE EQUAL  
EMPLOYMENT OPPORTUNITY  
COMPLAINTS PROCESS**

**A Management Review**



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OEI-05-99-00290**

# EXECUTIVE SUMMARY

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## PURPOSE

To conduct a management review of the Equal Employment Opportunity (EEO) complaint process of the Indian Health Service (IHS).

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## BACKGROUND

The IHS Director requested that the Inspector General conduct an EEO management review including the following issues: timeliness, management practices, delegations of authority, conflict of interest, confidentiality, and training of EEO personnel at Headquarters and Area Offices.

The Assistant Secretary for Management and Budget (ASMB) has departmental responsibility to provide technical assistance and policy guidance to the operating divisions (OPDIVS). The OPDIV EEO offices are responsible for “establishing and maintaining EEO programs” and processing EEO complaints. The ASMB has primary responsibility for preparing final agency decisions on formal EEO complaints.

The IHS has delegated EEO responsibility for the Albuquerque, Nashville, Navajo, and Oklahoma City Area Offices and Headquarters West to the Oklahoma City Area Office.

We reviewed EEO policies and procedures, complainant files, and any other available documentation relating to the six issues we evaluated. We compared the EEO process at the Area Offices, Service Units and both Headquarters to the standards established in EEO laws and regulations and by ASMB’s “EEO Complaints Processing Checklist.” In Headquarters East and Oklahoma City, we reviewed 31 formal complaint files closed in the last 2 years. We reviewed all 26 of the available informal complaint files closed in the last 2 years at Area Offices and Service Units. Using structured discussion guides, we interviewed a total of 223 respondents at Headquarters, Area Offices and Service Units.

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## FINDINGS

### **The IHS Operates under Four Conditions Which Complicate the EEO Complaints Process: Indian Preference, Commissioned Corps, Tribal Contracting/Compacting, and Downsizing**

Complaints involving the Commissioned Corps, Indian Preference or where tribal

contracting has occurred, create confusion in the IHS EEO complaints process. These issues, as well as downsizing, impact the scope and structure of the EEO process.

### **Inconsistencies in the EEO System Result in Unequal Treatment of Complaints**

Significant differences in the structure and approaches to handling complaints result from the IHS decision to divide EEO responsibilities between Headquarters East and Oklahoma City. The delegation of authority has resulted in considerable differences regarding the acceptance of formal EEO complaints between Headquarters East and Oklahoma City. Inconsistencies also exist in IHS' 12 Area Offices. The Area Directors make their own EEO staffing decisions, determining whether or not to have an on-site, full-time EEO manager and/or counselors.

### **The IHS EEO Program Lacks Direction, Potentially Weakening its Effectiveness**

The IHS has no systematic way of knowing whether their counselors or staff act appropriately on individual complaints. Neither the Headquarters East director nor the Oklahoma City EEO manager directly supervise EEO activities occurring in Area Offices or Service Units. There is a lack of uniformity in record keeping and retention, resulting in the inability to determine timeliness in the EEO complaint process.

Management involvement in individual EEO complaints represents a conflict of interest and undermines confidentiality. In many cases, EEO staff, counselors, or others involved with EEO informal complaints routinely provide specific case information to the Area or Service Unit Director. Despite requirements that the EEO process be separate from personnel functions, we found IHS' personnel office staff directly involved in the handling of EEO complaints in several Area Offices. Appearances of conflict of interest, even if inaccurate, raise questions about EEO's impartiality.

Many EEO staff and counselors believe that they need intermediate level or refresher training to advance or maintain their skills. Most EEO training is restricted to management staff.

We found no evidence of any periodic self-evaluations by IHS of its own EEO process.

### **Employee Distrust of EEO Is Widespread Throughout IHS and Undermines Effectiveness of the EEO Process**

There is widespread fear of reprisal among many IHS employees. Nearly two-thirds of the respondents, including some supervisory staff, indicated that they would not feel comfortable filing an EEO complaint. In addition, most IHS staff is unaware of IHS' upper management support of and commitment to EEO principles.

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## RECOMMENDATIONS

In order to address the issues identified in this report, IHS should:

**Address IHS-specific Issues Pertaining to Indian Preference, Commissioned Corps, Tribal Compacting/contracting and Downsizing**

**Standardize the Handling of EEO Complaints**

**Improve Counselor Performance and Supervision**

**Standardize Complaint Reporting, Recording, and File Retention**

**Implement Policy Guidance on Confidentiality**

**Eliminate Conflicts of Interest and the Potential for Conflicts of Interest**

**Improve Communication and Expand EEO Training and Educational Opportunities to All IHS Employees, EEO Staff and Counselors**

**Increase Employee Trust in the EEO Process**

*We provide specific details on how these recommendations can be carried out in the recommendations section at the end of the report.*

In order to ensure proper oversight and accountability, we also recommend that ASMB should:

**Perform a Follow-up Evaluation and Periodic Reviews on the Implementation of the OIG Recommendations**

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## AGENCY COMMENTS

We received comments on the draft report from the Indian Health Service (IHS) and the Assistant Secretary for Management and Budget (ASMB). Both concur with the vast majority of our 10 recommendations and the 34 ways of achieving them. Where appropriate, we changed the report to reflect their comments. The full IHS and ASMB comments are contained in Appendix B.

The IHS believes our recommendations “will provide opportunities for much needed improvement in the administration and management of the IHS EEO program.” The

IHS' actions to date include development of an EEO website, a Fact Sheet explaining differences between Indian Preference and Title VII discriminatory practices, and new EEO posters. We appreciate the cooperation of IHS in conducting this inspection and look forward to working with IHS in the development of their action plan in response to our recommendations.

Of the 34 ways of achieving the recommendations, IHS did not concur with the following four:

The IHS does not concur with elevating EEO supervisory responsibilities to IHS Headquarters. The IHS responded that they were unclear about the recommended organizational location of upper management. To clarify, we are recommending that an IHS upper manager at Headquarters provide management supervision (line authority) to both the EEO Director in Headquarters East and the EEO manager in Oklahoma City to provide more accountability. We are not recommending line authority over Area EEO Managers through Headquarters staff offices.

The IHS does not concur with our recommendation to implement standardized performance requirements and evaluation methods for EEO managers, staff and counselors which are reviewed/conducted by the EEO Director in Headquarters East and/or the EEO manager in Oklahoma City. It is unclear if IHS disagrees with our recommendation to implement performance requirements and evaluation methods and/or the line authority for evaluating performance. In either case, in order to measure EEO staff improvement, we believe this recommendation is necessary.

The IHS does not concur with our recommendations to establish a counselor selection criteria and to prohibit managers and personnel staff from becoming counselors. We believe that regardless of whether objectivity can be maintained, having managers and personnel staff who are EEO counselors creates an appearance of a conflict of interest. This is detrimental to the ability of the IHS EEO program to establish an overall sense of trust and impartiality among IHS employees.

The IHS does not concur with our recommendation to ensure that "EEO settlements are paid from a central fund, rather than an Area Director's operating expenses, or otherwise ensure that an Area Director does not have decision-making authority over the settlement amount." We agree with IHS that, "Areas related to each EEO issue should bear the cost of settling those issues." However we believe that it creates a conflict of interest to have the Area Director decide the amount of the award.

The ASMB concurs with the need to improve staff performance. However, they believe there are other ways of achieving staff supplements beside increased staffing levels and suggest that IHS consider term appointments, contracting and job sharing etc. We agree that staff performance can be improved through various mechanisms and would

encourage IHS to utilize any and all available to them.

The ASMB does not concur with the recommendation that IHS ensure that EEO settlements are paid from a central fund, rather than an Area Director's operation expenses. While we agree with ASMB that Area Offices should be held accountable, we stand by our belief that an Area Director's ability to decide the monetary amount of a complaint settlement creates a conflict of interest.